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OFFICE OF PETITIONS

In re Application of	:	
Nakamura et al.	:	
Application No.: 10/032,184	:	DECISION ON
Filing or 371(c) Date: 12/21/2001	:	PETITION
Attorney Docket Number: 112857-309	:	

This is a decision in response to the Petition to Withdraw Holding of Abandonment, filed August 4, 2006. The petition is properly treated under 37 CFR 1.181.

This Petition is hereby **dismissed**.

Any further petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under [insert the applicable code section]." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely and properly reply to the non-final office action, mailed December 5, 2006. The Office action set a three (3) month period for reply. Extensions of time were available under 37 CFR 1.136(a). No reply having been received, the application became abandoned on March 6, 2006. A Notice of Abandonment was mailed July 18, 2006.

Petition under 37 CFR 1.181

Applicant files the instant petition and asserts that a timely reply to the Office action was filed via facsimile on January 23, 2006. In support of this assertion, Applicant provides a copy of an Amendment which includes a Certificate of Transmission dated January 23, 2006, and executed by Julie A. Jager. No statement from Ms. Jager attesting to the transmission has been filed.

Applicable Law, Rules and MPEP

37 CFR 1.8(b), Certificate of mailing or transmission, .The MPEP 711.03(c)A, Petition To Withdraw Holding of Abandonment Based on Failure To Receive Office Action, explains that

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has

elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
 - (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
 - (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.
- (c) The Office may require additional evidence to determine if the correspondence was timely filed. (Emphasis supplied).

37 CFR 1.8(b)

Analysis and conclusion

Applicant has failed to comply with 37 CFR 1.8(b)(3). In this regard, a statement from Ms. Jager, which attests on a personal knowledge basis, to the previous timely mailing or transmission, is required. The petition is dismissed without prejudice. Applicant should file a request for reconsideration of petition which includes the necessary statement.


Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.


Derek L. Woods
Attorney
Office of Petitions